

## Farm Service Agency, USDA

## § 718.2

SOURCE: 61 FR 37552, July 18, 1996, unless otherwise noted.

### Subpart A—General Provisions

SOURCE: 68 FR 16172, Apr. 3, 2003, unless otherwise noted.

#### § 718.1 Applicability.

(a) This part:

(1) Is applicable to all programs set forth in chapters VII and XIV of this title which are administered by the Farm Service Agency (FSA), except that only §§ 718.6 and 718.11 are applicable to parts 761 through 774 of this chapter;

(2) Governs how FSA monitors marketing quotas, allotments, base acres and acreage reports. The regulations affected are those that establish procedures for measuring allotments and program eligible acreage, and determining program compliance.

(b) For all programs, except for those administered under parts 761 through 774 of this chapter:

(1) The provisions of this part will be administered under the general supervision of the Administrator, FSA, and carried out in the field by State and county FSA committees (State and county committees);

(2) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any regulations in this part;

(3) No provisions or delegation herein to a State or county committee will preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee;

(4) The Deputy Administrator, FSA, may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(c) The programs under parts 761 through 774 will be administered according to the part, or parts, applicable to the specific program.

[72 FR 63284, Nov. 8, 2007]

#### § 718.2 Definitions.

Except as provided in individual parts of chapters VII and XIV of this title, the following terms shall be as defined herein:

*Administrative variance* (AV) means the amount by which the determined acreage of tobacco may exceed the effective allotment and be considered in compliance with program regulations.

*Allotment* means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

*Allotment crop* means any tobacco crop for which acreage allotments are established pursuant to part 723 of this chapter.

*Barley* means barley that follows the standard planting and harvesting practice of barley for the area in which the barley is grown.

*Base acres* means the quantity of acres established according to part 1413 of this title.

*CCC* means the Commodity Credit Corporation.

*Combination* means consolidation of two or more farms or parts of farms, having the same operator, into one farm.

*Common ownership unit* means a distinguishable parcel of land consisting of one or more tracts of land with the same owners, as determined by FSA.

*Constitution* means the make-up of the farm before any change is made because of change in ownership or operation.

*Controlled substances* means the term set forth in 21 CFR part 1308.

*Corn* means field corn or sterile high-sugar corn that follows the standard planting and harvesting practices for corn for the area in which the corn is grown. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are not corn.

*County* means the county or parish of a state. For Alaska, Puerto Rico and the Virgin Islands, a county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

*County committee* means the FSA county committee.

*Crop reporting date* means the latest date the Administrator, FSA will allow the farm operator, owner, or their

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agent to submit a crop acreage report in order for the report to be considered timely.

*Cropland.* (a) Means land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest. Land which is seeded by drilling, broadcast or other no-till planting practices shall be considered tilled for cropland definition purposes;

(2) Is not currently tilled, but it can be established that such land has been tilled in a prior year and is suitable for crop production;

(3) Is currently devoted to a one-row or two-row shelter belt planting, orchard, or vineyard;

(4) Is in terraces that, were cropped in the past, even though they are no longer capable of being cropped;

(5) Is in sod waterways or filter strips planted to a perennial cover;

(6) Is preserved as cropland in accordance with part 1410 of this title; or

(7) Is land that has newly been broken out for purposes of being planted to a crop that the producer intends to, and is capable of, carrying through to harvest, using tillage and cultural practices that are consistent with normal practices in the area; provided further that, in the event that such practices are not utilized other than for reasons beyond the producer's control, the cropland determination shall be void retroactive to the time at which the land was broken out.

(b) Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(1) No longer used for agricultural production;

(2) No longer suitable for production of crops;

(3) Subject to a restrictive easement or contract that prohibits its use for the production of crops unless otherwise authorized by the regulation of this chapter;

(4) No longer preserved as cropland in accordance with the provisions of part 1410 of this title and does not meet the conditions in paragraphs (a)(1) through (a)(6) of this definition; or

(5) Converted to ponds, tanks or trees other than those trees planted in com-

pliance with a Conservation Reserve Program contract executed pursuant to part 1410 of this title, or trees that are used in one-or two-row shelterbelt plantings, or are part of an orchard or vineyard.

*Current year* means the year for which allotments, quotas, acreages, and bases, or other program determinations are established for that program. For controlled substance violations, the current year is the year of the actual conviction.

*Deputy Administrator* means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or their designee.

*Determination* means a decision issued by a State, county or area FSA committee or its employees that affects a participant's status in a program administered by FSA.

*Determined acreage* means that acreage established by a representative of the Farm Service Agency by use of official acreage, digitizing or planimetry areas on the photograph or other photographic image, or computations from scaled dimensions or ground measurements.

*Direct and counter-cyclical program (DCP) cropland* means land that currently meets the definition of cropland, land that was devoted to cropland at the time it was enrolled in a production flexibility contract in accordance with part 1413 of this title and continues to be used for agricultural purposes, or land that met the definition of cropland on or after April, 4, 1996, and continues to be used for agricultural purposes and not for non-agricultural commercial or industrial use.

*Division* means the division of a farm into two or more farms or parts of farms.

*Entity* means a corporation, joint stock company, association limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

*Extra Long Staple (ELS) Cotton* means cotton that follows the standard planting and harvesting practices of the area in which the cotton is grown, and meets all of the following conditions:

(1) American-Pima, Sea Island, Sealand, all other varieties of the Barbandense species of cotton and any hybrid thereof, and any other variety of cotton in which 1 or more of these varieties is predominant; and,

(2) The acreage is grown in a county designated as an ELS county by the Secretary; and,

(3) The production from the acreage is ginned on a roller-type gin.

*Family member* means an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including a legally adopted child;

(5) Grandchild

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

*Farm* means a tract, or tracts, of land that are considered to be a separate operation under the terms of this part provided further that where multiple tracts are to be treated as one farm, the tracts must have the same operator and must also have the same owner except that tracts of land having different owners may be combined if all owners agree to the treatment of the multiple tracts as one farm for these purposes.

*Farm inspection* means an inspection by an authorized FSA representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

*Farm number* means a number assigned to a farm by the county committee for the purpose of identification.

*Farmland* means the sum of the DCP cropland, forest, acreage planted to an eligible crop acreage as specified in 1437.3 of this title and other land on the farm.

*Field* means a part of a farm which is separated from the balance of the farm

by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

*GIS* means Geographic Information System or a system that stores, analyzes, and manipulates spatial or geographically referenced data. GIS computes distances and acres using stored data and calculations.

*GPS* means Global Positioning System or a positioning system using satellites that continuously transmit coded information. The information transmitted from the satellites is interpreted by GPS receivers to precisely identify locations on earth by measuring distance from the satellites.

*Grain sorghum* means grain sorghum of a feed grain or dual purpose variety (including any cross that, at all stages of growth, having characteristics of a feed grain or dual purpose variety) that follows the standard planting and harvesting practice for grain sorghum for the area in which the grain sorghum was planted. Sweet sorghum is not considered a grain sorghum.

*Ground measurement* means the distance between 2 points on the ground, obtained by actual use of a chain tape, GPS with a minimum accuracy level as determined by the Deputy Administrator, or other measuring device.

*Joint operation* means a general partnership, joint venture, or other similar business organization.

*Landlord* means one who rents or leases farmland to another.

*Measurement service* means a measurement of acreage or farm-stored commodities performed by a representative of FSA and paid for by the producer requesting the measurement.

*Measurement service after planting* means determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop.

*Measurement service guarantee* means a guarantee provided when a producer requests and pays for an authorized FSA representative to measure acreage for FSA and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and

the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

*Minor child* means an individual who is under 18 years of age. State court proceedings conferring majority on an individual under 18 years of age will not change such an individual's status as a minor.

*Nonagricultural commercial or industrial use* means land that is no longer suitable for producing annual or perennial crops, including conserving uses, or forestry products.

*Normal planting period* means that period during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

*Normal row width* means the normal distance between rows of the crop in the field, but not less than 30 inches for all crops.

*Oats* means oats that follows the standard planting and harvesting practice of oats for the area in which the oats are grown.

*Operator* means an individual, entity, or joint operation who is determined by the FSA county committee to be in control of the farming operations on the farm.

*Owner* means one who has legal ownership of farmland, including:

(1) Any agency of the Federal Government, however, such agency shall not be eligible to receive any payment pursuant to such contract;

(2) One who is buying farmland under a contract for deed;

(3) One who has a life-estate in the property; or

(4) For purposes of enrolling a farm in a program authorized by chapters VII and XIV of this title:

(i) One who has purchased a farm in a foreclosure proceeding; and

(A) The redemption period has not passed; and

(B) The original owner has not redeemed the property.

(ii) One who meets the provisions of paragraph (d)(1)(i) of this definition shall be entitled to receive benefits in accordance with an agency program only to the extent the owner complies with all program requirements.

(5) One who is an heir to property but cannot provide legal documentation to confirm ownership of the property, if such heir certifies to the ownership of the property and the certification is considered acceptable, as determined by the Deputy Administrator. Upon a false or inaccurate certification the Deputy Administrator may impose liability on the certifying party for additional cost that results—however such a certification may be taken by the Deputy Administrator as a bar to other claims where there has been a failure of other persons claiming an interest in the property to act promptly to protect or declare their interest or where the current public records do not accurately set out the current ownership of the farm.

*Partial reconstitution* means a reconstitution that is made effective in the current year for some crops, but is not made effective in the current year for other crops. This results in the same farm having two or more farm numbers in one crop year.

*Participant* means one who participates in, or receives payments or benefits in accordance with any of the programs administered by FSA.

*Pasture* means land that is used to, or has the potential to, produce food for grazing animals.

*Person* means an individual, or an individual participating as a member of a joint operation or similar operation, a corporation, joint stock company, association, limited stock company, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization including any entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, or a State, political subdivision or agency thereof. To be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved;

(2) Exercise separate responsibility for such interest; and

(3) Be responsible for the cost of farming related to such interest from a

fund or account separate from that of any other individual or entity.

*Producer* means an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or would have shared had the crop been produced. A producer includes a grower of hybrid seed.

*Quota* means the pounds allocated to a farm for a commodity in accordance with the Agricultural Adjustment Act of 1938, as amended.

*Random inspection* means an examination of a farm by an authorized representative of FSA selected as a part of an impartial sample to determine the adherence to program requirements.

*Reconstitution* means a change in the land constituting a farm as a result of combination or division.

*Reported acreage* means the acreage reported by the farm operator, farm owner, farm producer, or their agent on a Form prescribed by the FSA.

*Required inspection* means an examination by an authorized representative of FSA of a farm specifically selected by application of prescribed rules to determine adherence to program requirements or to verify the farm operator's, farm owner's, farm producer, or agent's report.

*Rice* means rice that follows the standard planting and harvesting practices of the area excluding sweet, glutinous, or candy rice such as Mochi Gomi.

*Secretary* means the Secretary of Agriculture of the United States, or a designee.

*Sharecropper* means one who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for its labor.

*Skip-row or strip-crop planting* means a cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

*Staking and referencing* means determining an acreage before planting by:

(1) Measuring or computing a delineated area from ground measurements and documenting the area measured; and, (2) Staking and referencing the area on the ground.

*Standard deduction* means an acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

*Subdivision* means a part of a field that is separated from the balance of the field by temporary boundary, such as a cropline which could be easily moved or will likely disappear.

*Tenant* means:

(1) One who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or

(2) One (other than a sharecropper) who rents land from another person in consideration of the payment of a share of the crops or proceeds therefrom.

*Tolerance* means a prescribed amount within which the reported acreage and/or production may differ from the determined acreage and/or production and still be considered as correctly reported.

*Tract* means a unit of contiguous land under one ownership, which is operated as a farm, or part of a farm.

*Tract combination* means the combining of two or more tracts if the tracts have common ownership and are contiguous.

*Tract division* means the dividing of a tract into two or more tracts because of a change in ownership or operation.

*Turn-area* means the area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turn row, headland, or end row).

*Upland cotton* means planted and stub cotton that is not considered extra long staple cotton, and that follows the standard planting and harvesting practices of the area and is produced from other than pure strain varieties of the Barbados species, any hybrid thereof, or any other variety of cotton in which

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one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

*Wheat* means wheat for feed or dual purpose variety that follows the standard planting and harvesting practice of wheat for the area in which the wheat is grown.

[68 FR 16172, Apr. 3, 2003; 69 FR 250, Jan. 5, 2004]

**§718.3 State committee responsibilities.**

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee, which the county committee fails to take in accordance with this part;

(2) Correct or require the county committee to correct any action taken by such committee, which is not in accordance with this part;

(3) Require the county committee to withhold taking any action which is not in accordance with this part;

(4) Review county office rates for producer services to determine equity between counties;

(5) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods; or

(6) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides or digital images.

(b) The State committee shall submit to the Deputy Administrator requests to deviate from deductions prescribed in §718.108, or the error amount or percentage for refunds of redetermination costs as prescribed in §718.111.

**§718.4 Authority for farm entry and providing information.**

(a) This section applies to all farms that have a tobacco allotment or quota under part 723 of this chapter and all farms that are currently participating in programs administered by FSA.

(b) A representative of FSA may enter any farm that participates in an FSA or CCC program in order to conduct a farm inspection as defined in this part. A program participant may request that the FSA representative

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present written authorization for the farm inspection before granting access to the farm. If a farm inspection is not allowed within 30 days of written authorization:

(1) All FSA and CCC program benefits for that farm shall be denied;

(2) The person preventing the farm inspection shall pay all costs associated with the farm inspection;

(3) The entire crop production on the farm will be considered to be in excess of the quota established for the farm; and

(4) For tobacco, the farm operator must furnish proof of disposition of:

(i) All tobacco which is in addition to the production shown on the marketing card issued with respect to such farm; and

(ii) No credit will be given for disposing of excess tobacco other than that identified by a marketing card unless disposed of in the presence of FSA in accordance with §718.109 of this part.

(c) If a program participant refuses to furnish reports or data necessary to determine benefits in accordance with paragraph (a) of this section, or FSA determines that the report or data was erroneously provided through the lack of good faith, all program benefits relating to the report or data requested will be denied.

**§718.5 Rule of fractions.**

(a) Fractions shall be rounded after completion of the entire associated computation. All mathematical calculations shall be carried to two decimal places beyond the number of decimal places required by the regulations governing each program. In rounding, fractional digits of 49 or less beyond the required number of decimal places shall be dropped; if the fractional digits beyond the required number of decimal places are 50 or more, the figure at the last required decimal place shall be increased by "1" as follows:

Required decimal	Computation	Result
Whole numbers .....	6.49 (or less) .....	6
	6.50 (or more) .....	7
Tenths .....	7.649 (or less) .....	7.6
	7.650 (or more) .....	7.7
Hundredths .....	8.8449 (or less) .....	8.84
	8.8450 (or more) .....	8.85
Thousandths .....	9.63449 (or less) .....	9.634
	9.63450 (or more) .....	9.635